

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
(EASTERN DIVISION)**

M&T CAPITAL AND LEASING
CORPORATION *f/k/a* PEOPLE'S
CAPITAL AND LEASING CORP.,

Plaintiff,

v.

GRETТА TRANSPORTATION INC and
TUDOR TALMACI,

Defendants.

CASE NO.

VERIFIED COMPLAINT

Plaintiff, M&T Capital and Leasing Corporation, formerly known as People's Capital and Leasing Corp., by and through its undersigned counsel, and for its Verified Complaint against Defendants, Gretta Transportation Inc. and Tudor Talmaci (collectively, the "Defendants"), states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff M&T Capital and Leasing Corporation ("M&T") is a corporation organized and existing pursuant to the laws of the State of Connecticut with its principal place of business located at 850 Main Street, Bridgeport, Connecticut 06604.

2. Defendant Gretta Transportation Inc. ("Gretta") is a Michigan corporation with its principal place of business located at 133 Hampton Avenue, Westmont, Illinois 60559 and may be served through its agent of service, Tudor Talmaci at 16607 Barberry St., Apt. A4, Southgate, Michigan 48195.

3. Defendant Tudor Talmaci (“Mr. Talmaci”) is an individual who, upon information and belief, is a citizen of Michigan with a usual place of abode located at 16607 Barberry St., Apt. A4, Southgate Michigan 48195.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), in that the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because, upon information and belief, a substantial part of the property that is the subject of the action is situated in this district.

GENERAL ALLEGATIONS

6. On or about November 2, 2018, People’s Capital and Leasing Corp. (“People’s Capital”) and Gretta entered into Master Loan and Security Agreement No. 5501, as amended from time to time (“Master Loan Agreement”). A true and correct copy of the Master Loan Agreement is attached hereto as **Exhibit A**.

7. In accordance with Paragraph No. 3 of the Master Loan Agreement, to secure payment and performance of Gretta to People’s Capital, Gretta conveyed, assigned, and granted to People’s Capital a continuing security interest in “(i) the equipment described in the applicable Schedule and all amendments, riders and supplements thereto including all related software (embedded therein or otherwise), all parts, repairs, additions, attachments, replacements, replacement parts, accessions and accessories incorporated therein or affixed thereto, modifications and

substitutions thereto . . . and (ii) all proceeds thereof including insurance proceeds . . .” See Master Loan Agreement, ¶ 3.

8. On November 2, 2018, Gretta entered into Schedule No. 001 (“Schedule No. 1”) to the Master Loan Agreement, pursuant to which People’s Capital financed and obtained a purchase money security interest in one (1) 2019 Peterbilt 567 Tractor Truck, VIN 1XPCDP9X8KD498095 and one (1) 2019 Peterbilt 389 Tractor Truck, VIN 1XPXDP9X0KD276409 (the “Equipment”). A true and correct copy of Schedule No. 1 is attached hereto as **Exhibit B**.

9. On or about November 2, 2018, guarantor Mr. Talmaci entered into an Individual Guaranty (“Guaranty”) in favor of People’s Capital. A true and correct copy of the Guaranty is attached hereto as **Exhibit C**.

10. The Guaranty was made to induce People’s Capital to enter into the Master Loan Agreement with Gretta.

11. Pursuant to the terms of the Master Loan Agreement and Schedule No. 1, Gretta agreed to pay People’s Capital sixty (60) consecutive monthly payments of \$5,969.32. The total principal amount of Schedule No. 1 was \$293,800.64.

12. On or about November 2, 2018, Gretta acknowledged that the Equipment had been delivered to and was approved by Gretta. A true and correct copy of the original Delivery Certificate is attached hereto as **Exhibit D**.

13. People’s Capital’s security interest in the Equipment is perfected due to its being listed as the first lienholder on the State of Illinois Certificates of Title of a

Vehicle for the Equipment. A true and correct copy of the original titles to the Equipment is attached hereto as **Exhibit E**.

14. On August 11, 2022, People's Capital sent to the Defendants, a Notice of Default, Acceleration, and Demand for Payment, which default was the result of Gretta's failure to make all payments due and failure to maintain insurance in violation of Sections 2 and 7 of the Master Loan Agreement. A true and correct copy of the original Notice of Default, Acceleration, and Demand for Payment is attached hereto as **Exhibit F**.

15. Pursuant to the Master Loan Agreement, Schedule No. 1, and Guaranty (collectively, the "Loan Documents"), the Defendants remain obligated and responsible to People's Capital for the outstanding balance remaining in the total amount of \$106,411.39 as of August 8, 2022, plus default interest at the rate of 18%, costs, expenses, and attorneys' fees and are required under the Master Loan Agreement and Schedule No. 1 to surrender the Equipment immediately to People's Capital.

16. People's Capital has performed all of its obligations in accordance with the Loan Documents.

17. As of April 2, 2022, People's United Bank, N.A., a national banking association located in Bridgeport, Connecticut, merged with and into M&T Bank, a New York state-chartered bank with a principal place of business located at One M&T Plaza, Buffalo, New York, with M&T Bank as the surviving bank. People's Capital and Leasing Corp. became a subsidiary of M&T Bank as of April 2, 2022.

18. People's Capital amended its name with the Connecticut Secretary of State on August 29, 2022 to M&T Capital and Leasing Corp. A true and correct copy of the Certificate of Amendment filed with the Connecticut Secretary of State is attached hereto as **Exhibit G**.

19. Accordingly, M&T is successor by merger of the Loan Documents.

20. M&T is the legal and rightful owner of the Loan Documents and has not assigned or transferred its right in same.

Count One – Replevin (All Defendants)

21. M&T repeats and realleges paragraph 1 through 15 as if fully set forth herein.

22. The Loan Documents entered into by and between M&T, as successor by merger, and the Defendants comport with the standard conduct of business within the industry.

23. Pursuant to the Loan Documents, if one or more events of default shall occur and be continuing with regard to the obligations, M&T shall have such rights and remedies with respect to the Equipment as provided under the Loan Documents and any and all of the rights and remedies at law and equity, including, but not limited to, entry of any location where the Equipment is located to take possession of it without process of law.

24. Gretta has defaulted under the terms of the Master Loan Agreement pursuant to this failure to make all payments due and failure to maintain proper

insurance on the Equipment in violation of Sections 2 and 7 of the Master Loan Agreement.

25. M&T is entitled to possession of the Equipment under the Loan Documents.

26. Gretta wrongfully retains possession and control of the Equipment. As each day passes and the Equipment is not repossessed, the Equipment continues to depreciate in value.

27. Upon information and belief, the Equipment is located in DuPage County, Illinois.

28. The description of the personal property is the Equipment described in Schedule No. 1, specifically: one (1) 2019 Peterbilt 567 Tractor Truck, VIN 1XPCDP9X8KD498095 and one (1) 2019 Peterbilt 389 Tractor Truck, VIN 1XPXDP9X0KD276409.

29. The Equipment in question is not earnings and not exempt from execution.

30. The replevin of the Equipment is not sought to hinder, delay or defraud any other creditor of Gretta.

31. Based upon the facts alleged herein, there is a substantial likelihood that M&T will prevail on the merits of its claim.

32. Upon information and belief, Gretta appears to be exercising a degree of control over the Equipment and continues to receive the benefit of use of the Equipment.

33. Upon information and belief, the Equipment has not been taken for any tax, assessment, or fine levied by virtue of any law of this State, against the property of M&T, nor seized under any lawful process against the goods and chattels of M&T subject to such lawful process, nor held by virtue of any order for replevin against People's Capital.

34. M&T has a right to replevy and recover the Equipment in which it has a security interest with a right to immediate possession and damages for such wrongful detention.

35. M&T has a right to pursue any legal remedy available to it to collect the obligations outstanding, to enforce its remedies available to it both under the Loan Documents and otherwise, including, without limitation, the right to take possession of the Equipment and dispose of the same.

36. Upon information and belief, the fair market value of the Equipment is approximately \$160,000 depending on its condition.

37. By reason of such wrongful detention of the Equipment, M&T has sustained damages in the amount of \$106,411.39 as of August 8, 2022, plus costs, expenses, and attorneys' fees, all of which continue to accrue, as well as default interest that continues to accrue.

38. M&T may suffer irreparable harm if its request for an order of replevin is denied.

39. M&T has demanded return of the Equipment, however, Gretta has failed and refused to return the same.

40. M&T has a perfected security interest in the Equipment as evidenced by the Certificates of Title attached hereto as Exhibit E.

41. M&T has retained the law firms of Walton Telken, LLC and Updike, Kelly & Spellacy, P.C. and has agreed to pay said firms a reasonable fee for their services. Pursuant to the Loan Documents, M&T is entitled to recover from Defendants its attorneys' fees and costs incurred enforcing the Loan Documents.

Count Two – Breach of Contract (Gretta Transportation Inc.)

42. M&T repeats and re-alleges paragraphs 1 through 36 as if fully set forth herein.

43. M&T is the owner of the Master Loan Agreement, pursuant to which Gretta promised to make certain monthly payments for its possession and use of the Equipment.

44. Gretta has breached the Master Loan Agreement due to its failure to pay all monthly payments due and failure to maintain proper insurance on the Equipment.

45. On August 11, 2022, M&T sent to Gretta, a Notice of Default, Acceleration, and Demand for Payment, which default was the result of Gretta's failure to make all payments due and failure to maintain insurance in violation of Sections 2 and 7 of the Master Loan Agreement.

46. Pursuant to the Loan Documents, the Defendants remain obligated and responsible to M&T for the outstanding balance remaining in the total amount of

\$106,411.39 as of August 8, 2022, plus default interest at the rate of 18%, costs, expenses, and attorneys' fees.

47. People's Capital has retained the law firms of Walton Telken, LLC and Updike, Kelly & Spellacy, P.C. and has agreed to pay said firms a reasonable fee for their services. Pursuant to the Loan Documents, M&T is entitled to recover from Defendants its attorneys' fees and costs incurred enforcing the Loan Documents.

Count Three – Breach of Guaranty (Tudor Talmaci)

48. M&T repeats and re-alleges paragraphs 1 through 42 as if fully set forth herein.

49. On or about November 2, 2018, guarantor Mr. Talmaci entered into the Guaranty in favor of M&T, to induce M&T to enter into the Master Loan Agreement with Gretta.

50. Mr. Talmaci has breached the Guaranty due to his failure to pay all amounts due under the Loan Documents after Gretta failed to pay the same.

51. On August 11, 2022, People's Capital sent to Mr. Talmaci, a Notice of Default, Acceleration, and Demand for Payment, which default was the result of Defendants' failure to make all payments due and failure to maintain insurance in violation of Sections 2 and 7 of the Master Loan Agreement.

52. Pursuant to the Guaranty, Mr. Talmaci remains obligated and responsible to M&T for the outstanding balance remaining in the total amount of \$106,411.39 as of August 8, 2022, plus default interest at the rate of 18%, costs, expenses, and attorneys' fees.

53. M&T has retained the law firms of Walton Telken, LLC and Updike, Kelly & Spellacy, P.C. and has agreed to pay said firms a reasonable fee for their services. Pursuant to the Loan Documents, M&T is entitled to recover from Defendants its attorneys' fees and costs incurred enforcing the Loan Documents.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, M&T Capital and Leasing Corporation, claims the following relief from the Court:

1. Replevin, seizure, and possession of the Equipment;
2. Costs of replevin;
3. Money damages;
4. Attorneys' Fees, Costs, and Expenses; and,
5. Such other relief as the Court deems just in law and equity.

Dated this 30th day of September 2022.

Respectfully submitted,

**M&T CAPITAL AND
LEASING CORPORATION**

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I, Robert Van Tine, being duly sworn, depose and say:

I have read the foregoing Verified Complaint and declare under penalties of perjury as provided by law pursuant to 28 U.S.C. § 1746 that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and, as to such matters, I declare that I verily believe the same to be true.

Dated at Bridgeport, Connecticut, this 29th day of September 2022.



Name: Robert Van Tine
Title: Senior Vice President
M&T Capital and Leasing Corporation